slaughter. *Reg. v. Lockley,* 4 Fost. & F. 155; *Rex. v. Thompson,* 1 Moody C. C. 80; *State v. Scheele,* 57 Conn. 307.

INSURANCE—LIFE INSURANCE—EXECUTION OF INSURED FOR CRIME.—McCUE v. N. W. MUT. LIFE INS. CO., 167 FED. 435.—*Held,* that as the laws of Wisconsin govern in this case the rule laid down by the Wisconsin courts must be followed and so the fact that the insured was executed for a crime did not bar a recovery on the policy by his heirs, where it contained no provision excluding such risk. Waddill, Dist. J., *dissenting.*

The courts are about evenly divided on this point. Some hold that the legal execution of the insured for a crime committed by him is no defense to a suit for his policy in the absence of any provision of the policy exempting the company from liability in that event. *Collins v. Metro. Ins. Co.,* 232 Ill. 37. While others hold that where the insured has been convicted and executed for his crime the beneficiaries cannot recover on the insurance policy. *Burt v. Union Cent. Ins. Co.,* 187 U. S. 362. Public policy will not permit a recovery by heirs through wrong of insured. *Schreiner v. High Court,* 35 Ill. App. 576. But it is stated that the liability of the insurer is not avoided on the ground of public policy by the fact, that the insured is executed for a crime. *Greenhood on Public Policy,* pp. 1, 2.

MASTER AND SERVANT—IDENTITY OF EMPLOYER—INDEPENDENT CONTRACTOR.—BOWIE v. COFFIN VALVE CO., 86 N. E. 914 (MASS.).—*Held,* that unless an employee knew he was working for an independent contractor no relation of employer and employee existed between the employee and the contractor, since he could not be transferred from one employer to another without his consent, expressly given or implied.

The general rule in these cases seems to be that he who agrees to furnish the completed work through servants over whom he retains control is responsible for their negligence in the conduct of it. *Standard Oil Co. v. Anderson,* 81 C. C. A. 399; *Higgins v. Western U. T. Co.,* 156 N. Y. 75. And the mere fact that a contractor's servant is sent to do work pointed out to him by the owner will not make him a servant of the owner. *Driscoll v. Towle,* 181 Mass. 416; neither will the owner's right to inspect the work, *Pack v. N. Y.,* 4 Seld. 222 (N. Y.); nor payment of wages by the owner, *The Harold,* 21 Fed. Rep. 428; nor the fact that the contractor's servants and the master's servants are engaged in a common employment, *Morgan v. Smith,* 159 Mass. 570. But a general servant of one person may, for a particular occasion, become the servant of another, *Delaware L. & W. Ry Co. v. Hardy,* 59 N. J. L. 35; and for the particular employment he is the servant of the other, *Hasty v. Sears,* 157 Mass. 123. Though in all cases it seems the servant must consent to the transfer and accept the other person as his master. *Ward v. New England Fibre Co.,* 154 Mass. 419.

MASTER AND SERVANT—INJURIES TO THIRD PARTIES—INDEPENDENT CONTRACTOR—LIABILITY OF EMPLOYER—BLASTING.—KENDALL v. JOHNSON,

99 PAC. 310 (WASH.).—*Held,* that blasting rock in the Cascade Mountains, far removed from any human habitation, falls within the exceptions to the general rule of an employer's non-liability for injuries resulting from the doing of work placed in the hands of an independent contractor.

The weight of authority seems to hold that blasting is within the exceptions to the general rule if the employer used due care in selecting a competent contractor, *Hill v. Schneider,* 13 N. Y. App. Div. 299; *Forsyth v. Hooper,* 93 Mass. 419; and it is his legal duty to select a competent and careful contractor. *Brannock v. Elmore,* 114 Mo. 55. Furthermore, this rule applies even though the blasting is done in close proximity to adjoining buildings. *French v. Vix,* 143 N. Y. 90; *contra*: *Wetherbee v. Partridge,* 175 Mass. 185. But other courts hold that blasting is not within the exceptions. *Buddin v. Fortunato,* 16 Daly 195 (N. Y.); *St. Paul Water Co. v. Ware,* 16 Wall. 566 (U. S.). Yet some jurisdictions hold the principal a joint wrong-doer. *Carmen v. Steubenville, etc., Ry. Co.,* 4 Ohio St. 399.

MONEY PAID—MONEY PAID UNDER ILLEGAL CONTRACT.—MCCALL V. WHALEY, 115 S. W. 658 (TEX.).—*Held,* that if an illegal contract is executory, money paid thereunder may be recovered.

The law is not satisfactorily settled on this point, but generally money paid or goods delivered on an illegal executory contract can be recovered. *Love v. Harvey,* 114 Mass. 80; *Fisher v. Hildreath,* 117 Mass. 558. In such cases the law implies a promise on the part of the person receiving the money to refund it in favor of the party paying it. *Adams Express Co. v. Reno,* 48 Mo. 268. Because it best comports with public policy to arrest the illegal proceeding before it is consummated. *Stacey v. Foss,* 19 Me. 335. The following cases illustrate the rule holding that a recovery could be had for money paid on shares of stock to be illegally issued, *Fairchild v. Gallatin,* 100 U. S. 47; or for goods sold in furtherance of an illegal combination, *Continental Wall Paper Co. v. L. Vought and Sons Co.,* 77 C. C. A. 567; or for a bond or mortgage given to indemnify bail, *Moloney v. Nelson,* 158 N. Y. 351; *contra*: *U. S. v. Ryder,* 110 U. S. 729. But in *Ullman v. St. Louis Fair Ass'n,* 167 Mo. 273, a recovery was denied on goods delivered in performance of an illegal contract; also for money paid on a note given to renounce an executorship, *Ellicott v. Chamberlain,* 38 N. J. L. 604; and on a contract between a councilman and a municipal corporation. *Bay v. Davidson,* 133 Ia. 688. It seems, however, that a recovery will be denied on all contracts involving moral turpitude or contrary to public policy. *Edwards v. Randle,* 63 Ark. 318.

NEW TRIAL—MISCONDUCT OF COUNSEL—TREATING JURORS TO CIGARS.—STEENBURGH V. MCRORIE, 113 N. Y. SUPP. 1118.—*Held,* that where one of the attorneys for the prevailing party twice treated the jurors to cigars during the progress of the trial and before they had retired to deliberate on their verdict, a new trial is required.

It has been well established that a new trial will be granted if jurors are entertained during the trial by the party in whose favor the